

ZONING BOARD OF APPEALS
MEETING MINUTES
February 12, 2013
4:00 P.M.

CALL TO ORDER: Mr. John Stetler, Chairperson called meeting to order at 4:05 P.M.

ATTENDANCE:

Members Present: Rick Barnes Sharon Heisler
 Deland Davis John Stetler
 Greg Dunn

Members Excused: James Moreno, Carlyle Sims, and Becky Squires

Staff Present: Jill Steele, Deputy City Attorney
 Marcel Stoetzel, City Attorney Ofc.
 Glenn Perian, Senior Planner
 Leona Parrish, Admin. Assistant, Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

CORRESPONDANCE: None

OLD BUSINESS:

NEW BUSINESS:

A) Election of Officers:

Nomination for Chairperson:

Mr. Deland Davis nominated Mr. John Stetler as Chairperson; seconded by Mr. Rick Barnes.

**CHAIRPERSON ASKED FOR ANY ADDITIONAL NOMINATIONS, SEEING NONE A
VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, APPROVED.**

Nomination for Vice-Chairperson:

Mr. Deland Davis nominated Mr. Greg Dunn as Vice-Chairperson; second by Mr. Rick Barnes.

**CHAIRPERSON ASKED FOR ANY ADDITIONAL NOMINATIONS, SEEING NONE A
VOTE WAS TAKEN; ALL IN FAVOR; NONE OPPOSED, APPROVED.**

B) Zoning Board New Standards Reviewed: Ms. Jill Steele, Deputy City Attorney handed out for review two documents explaining the differences between the two types of variances; they are as follows: 1) Use Variance Standards - Revised February 2013, and 2) Dimensional (Non Use) Variance – February 2013.

Use Variance: Ms. Steele said a use variance is very rarely approved; unnecessary hardship in the applicant proving a case “If it can be used for what it is zoned they would have not had a case”. Ms. Steele shared a case history for an example of an unnecessary hardship not being proven.

Mr. John Stetler asked about a Legal Non-Conforming property being destroyed and owner asking the zoning board permission to rebuild. Ms. Steele stated it would be “iffy” to allow; it would be a better case because of it not being intended to be abandoned of its use.

Ms. Steele explained items A – D on the Use Variance Standards Chapter 1234.04 (c) (2) (A. – D.) and noted the “Findings” in the Staff Report and Recommendations to be upheld and agreed upon.

Dimensional (Non Use) Variance: Ms. Steele stated this type of a variance would be more adept to be approved than a “Use Variance” and that it should not be granted because no one attended the meeting to object or had complained about the variance request.

Ms. Steele explained items A – D on the Use Variance Standards Chapter 1234.04 (c) (1) (A. – D.) and noted that the records of what was brought before the Zoning Board of Appeals and that the decision needs to be based on the record and the ordinance. Said the judge would need to uphold the decision of the ZBA if the ordinance was upheld by their decision.

APPROVAL OF MINUTES:

MOTION: WAS MADE BY MR. GREG DUNN TO APPROVE THE DECEMBER 11, 2012 ZONING BOARD OF APPEALS MINUTES AS PRESENTED; SUPPORTED BY MR. DELAND DAVIS.

ALL IN FAVOR; NONE OPPOSED, MOTION CARRIED – MINUTES APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. John Stetler asked if there might be monies within the city budget to allow for training sessions for the zoning board members to attend. Mr. Glenn Perian asked Mr. Stetler to forward the training information he had received to him and he would follow-up on seeing if there was any funding available for training.

ADJOURNMENT: Meeting was adjourned at 5:09 P.M.



Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department

Use Variance Standards Revised Feb 2013

1. Will a strict application of the provisions of the zoning ordinance related to the use of the land impose upon the property owner an unnecessary hardship? (§1234.04 (b)(2))
 - a. "Unnecessary hardship" has been interpreted under Michigan case law to amount to "a taking."
 - b. If there is not an "unnecessary hardship" to the property owner if not permitted to use the land in the manner prohibited by the particular zoning district, then the standards have not been met and the variance should be denied. CAN THE PROPERTY REASONABLY USED IN COMPLIANCE WITH THE ZONING CODE? If it can, then THERE IS NOT AN UNNECESSARY HARDSHIP and the use variance should be denied.
 - c. If there is an "unnecessary hardship," then the standards have been met thus far and continue to below #2 for further consideration.

ORDINANCE STANDARDS – §1234.04(c)(2)(A) through (D)

(2) Use Variances:

- A. The building, structure or land cannot be reasonably used in a manner consistent with the uses allowed in the zoning district in which the property is located.
- B. The condition or situation of the specific piece of property or the intended use of the property is unique to that property and not commonly present in the general vicinity or zoning district. Unique conditions or situations may include exceptional narrowness, shallowness, or shape of the property that existed when the applicable zoning ordinance provision took effect: exceptional topographic conditions or other extraordinary situation on the land, building, or structure; or the use or development of the property immediately adjoining the property in question; or any other physical situation on the land, building or structure deemed by the Board to be extraordinary.
- C. The proposed use, if granted, will not alter the essential character of the neighborhood or the intent of the master plan.
- D. The immediate hardship cited as the cause for the variance was not created by any affirmative action by the applicant.

APPLICATION OF THE STANDARDS IN REACHING A DECISION:

1. Identify whether an "unnecessary hardship" exists.

- a. If the property *can* be reasonably used for one of the allowed uses in the zoning district, even if it isn't one of the uses that the property owner prefers to use, then there is no unnecessary hardship and the variance should be denied.
- b. If an "unnecessary hardship" exists, and the property cannot reasonably be used for one of the allowed uses in the zoning district, then the ordinance standards have been met **THUS FAR** and move on to consider below #2.

2. Is the condition or situation of the specific piece of property or the intended use of the property unique to that property and not commonly present in the general vicinity or zoning district? Examples would include:

- It is exceptionally narrow, shallow, or there is something unique about the shape of the property that existed when the applicable zoning ordinance provision took effect.
 - There are exceptional topographic conditions or other extraordinary situation on the land, building, or structure.
 - The use or development of the property immediately adjoining the property is in question.
 - There is some other physical situation on the land, building or structure deemed by the Board to be extraordinary.
- a. If the condition or situation *is* unique to that property and not commonly present in the general vicinity or zoning district, then the standards have been met **THUS FAR** and further consideration to below #3 is warranted.
 - b. If the condition or situation is not unique to that property and/or it *is* common in the general vicinity or the zoning district, then the standards have not been met and the variance should be denied.

3. Will the proposed use, if granted, alter the essential character of the neighborhood or the intent of the master plan?

- a. If the proposed use, if granted, will not alter the essential character of the neighborhood or the intent of the master plan, then the ordinance standards have been met **THUS FAR** and consideration of below #4 is warranted.
- b. If the proposed use, if granted, *will alter the essential character of the neighborhood or the intent of the master plan*, then the variance should be denied because the ordinance standards have not been met.

4. Was the immediate hardship which was cited by the applicant as the cause for the variance created by any affirmative action by the applicant?

- a. If the cited immediate hardship *was not* created by an affirmative action by the applicant, then the ordinance standards have been met and the variance could be granted.
- b. If the cited immediate hardship *was* created by an affirmative action by the applicant, then the ordinance standards have NOT been met and the variance should be denied.

Dimensional (Non Use) Variance – February 2013

Is there a practical difficulty related to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements (or to any other nonuse-related standard) of the zoning ordinance in carrying out the strict letter of the zoning ordinance due to the irregular shape of the lot or topographical or other condition? If so, then the Board may grant a variance so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice is done. [The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act, MCL 125-3101 et seq.; (§1234.04 (b)(1))

STANDARDS: 1234.04(c)(1)(A) thru (D):

(1) Nonuse (dimensional) Variances:

A. When it can be shown that a practical difficulty would, in fact, exist if the strict non-use requirements of this zoning ordinance (e.g., lot area, width, setbacks, building height, etc.) were applied to a specific building project, the Board may grant a variance from these requirements. The practical difficulty from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain a higher financial return.

B. The practical difficulty must be exceptional and peculiar to the subject parcel of land which do not generally exist throughout the City and may not be self-imposed or the result of an earlier action by the applicant. If the parcel of land could be reasonably built upon in conformance with the requirements of this zoning ordinance by simply relocating or redesigning the structure(s), then a variance shall not be granted.

C. A variance shall not be granted when it will alter or conflict with the intent of this Ordinance considering the public benefits intended to be secured by this Zoning Code and the rights of others whose property would be affected by the allowance of the variance.

D. Any variance granted shall be the minimum necessary to provide relief for the practical difficulty of the applicant.

APPLICATION OF THE STANDARDS IN REACHING A DECISION:

1. Is there a practical difficulty related to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements in carrying out the strict letter of the zoning ordinance? [§1243.04(C)(1)(A)] Identify the “practical difficulty,” if one exists.

- a. If there is an *unusual* and **practical difficulty specific to this property in question** due to the **shape of the lot, topographical conditions** or something else unique to the land, not unique to the particular applicant, then the variance standards have been met **THUS FAR** and further consideration to below #2 is warranted.

- b. If there is NOT an unusual and practical difficulty *specific to this property* in question, then the variance does not meet the standards and should NOT be granted.
- 2. Is the applicant's stated "practical difficulty" more than a mere inconvenience or a mere inability to attain a higher financial return? [§1243.04(C)(1)(A)]
 - a. If it is more than a mere inconvenience or a mere inability to attain a higher financial return, then the variance standards have been met THUS FAR and further consideration to below #3 is warranted.
 - b. If the stated practical difficulty is only a mere inconvenience or a mere inability to attain a higher financial return, then the variance does not meet the standards and should NOT be granted.
- 3. Is the applicant's "practical difficulty" exceptional and peculiar to the subject parcel of land which does not generally exist throughout the City? [§1243.04(C)(1)(B)]
 - a. If the practical difficulty is exceptional and peculiar to the subject parcel of land and does not generally exist throughout the City, then the variance standards have been met THUS FAR and further consideration to below #4 is warranted.
 - b. If the practical difficulty is not exceptional and peculiar to this parcel and it generally exists in areas throughout the City and/or zoning district, then the variance does not meet the standards and should NOT be granted.
- 4. Is the applicant's stated "practical difficulty" self-imposed or the result of an earlier action by the applicant? [§1243.04(C)(1)(B)]
 - a. If the practical difficulty is not self-imposed or the result of an earlier action by the applicant, then the standards have been met THUS FAR and further consideration to below #5 is warranted.
 - b. If the practical difficulty is self-imposed or the result of an earlier action by the applicant, (e.g., the applicant built an accessory building in such a place that prevents a now desired addition from complying with the necessary ordinance dimensions) then the variance does not meet the standards and should NOT be granted.
- 5. Could this parcel of land be reasonably built upon in conformance with the requirements of this zoning ordinance by simply relocating or redesigning the structure(s)? [§1243.04(C)(1)(B)] (**Note the standard is "reasonably" be built upon, so consider

and compare the reasonableness of the expectation of having a 2-car garage versus a 3-car garage on a City lot***)

- a. If the parcel of land could not reasonably be built upon by relocating or redesigning the structure, then the standards have been met THUS FAR and further consideration to below #6 is warranted.
 - b. If the parcel of land could be reasonably built upon by relocating or redesigning the structure (even if the design is not the owner's preferred design, such as by moving the proposed addition to a different area of the house/parcel or making it smaller) then the variance does not meet the standards and should NOT be granted.
6. Will granting the variance alter or conflict with the intent of this Ordinance considering the public benefits intended to be secured by this Zoning Code and the rights of others whose property would be affected by the allowance of the variance (e.g., there will no longer be enough space for emergency vehicles to service the property and/or the neighbor)? [§1243.04(C)(1)(C)]
 - a. If granting the variance would not alter or conflict with the intent of the Ordinance considering the public benefits intended to be secured by the Code and the rights of others whose property rights would be affected, then the standards have been met THUS FAR and further consideration to below #7 is warranted.
 - b. If granting the variance would alter and/or conflict with the intent of the Ordinance when considering the public benefits intended to be secured by the Code and the rights of others whose property rights would be affected, then the variance does not meet the standards and should NOT be granted.
7. Is the intended grant of the variance the minimum necessary to provide relief for the practical difficulty of the applicant (e.g., Can you provide the minimum relief necessary by granting a 5' variance rather than the requested 10'? Can you grant a variance that relocates the construction to an area of the property where a lesser variance would be needed from the dimensions required in the ordinance)? [§1243.04(C)(1)(D)]
 - a. If granting the variance exactly as requested is the minimum necessary to provide relief for the practical difficulty, then the variance request should be granted as requested.
 - b. If the variance requested could reasonably be reduced (e.g., grant 5' instead of 10' or reduce the size of the addition, etc) then it must be reduced such that the minimum variance from the ordinance standards are being granted in order to provide the relief necessary.